IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.Rev.Pet.No. 2972 of 2007()

CRA.1230/2004 of II ADDL.SESSIONS COURT, ERNAKULAM
CC.567/1997 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED

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1. RAZIM USMAN, CHIEF EXECUTIVE,
   M/S.AL-RAZ EXPORTS, 7/382, 3RD FLOOR,
   COCHIN - 2.

2. SUHARA USMAN, W/O.RAZIM USMAN,
   PROPRIETRIX, M/S.AL-RAZ EXPORTS,
   7/382, 3RD FLOOR, COCHIN - 2.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SMT.TULASI PANICKER

RESPONDENTS: RESPONDENTS/RESPONDENT

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1. M/S.GREENWAYS SHIPPING AGENCIES
   PRIVATE LIMITED, W/ISLAND, COCHIN-3
   REPRESENTED BY ITS GENERAL MANAGER,
   M.K.M.NAIR.

2. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2972 OF 2007

Dated this the 20th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioners who were the accused in C.C. No.567/97 on the file of the JFCM-I, Ernakulam, challenge the conviction entered and the sentence passed against them for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioners and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioners re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioners in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioners while entering the above finding. The said finding has been recorded

on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioners. I am, however, inclined to modify the sentence imposed on the revision petitioners provided they comply with the condition hereinafter mentioned. Accordingly, if the revision petitioners pay to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.1,00,000/- (Rupees one lakh only) within four months from today, then they need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioners commit default in making the payment as aforesaid, they shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioners pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioners.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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